

2013 DRAFTING REQUEST

Bill

Received: **6/24/2013** Received By: **phurley**
Wanted: **As time permits** Same as LRB: **-3467**
For: **Evan Goyke (608) 266-0645** By/Representing:
May Contact: Drafter: **phurley**
Subject: **Criminal Law - crimes agnst kids** Addl. Drafters:
Criminal Law - victims Extra Copies:

Submit via email: **YES**
Requester's email: **Rep.Goyke@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Extend time limit for minor victims of sex crimes to seek compensation

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	phurley 10/8/2013	evinz 7/25/2013	rschluet 7/25/2013	_____	lparisi 7/25/2013		State
/1	phurley 10/23/2013	evinz 10/14/2013	rschluet 10/14/2013	_____	sbasford 10/14/2013	srose 10/17/2013	State
/2		kfollett 10/23/2013	rschluet 10/23/2013	_____	mbarman 10/23/2013	mbarman 10/23/2013	State

FE Sent For:

@intro

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/P1 phurley

1pl eev
7/25/13

[Handwritten signature]
7/25/13

FE Sent For:

<END>

TO: EVAN GOYKE

FROM: LINDSEY ANDERSON

DATE: JUNE 12, 2013

RE: LINDSEY'S LAW

CURRENT LAW

Under the current law, § 949.03 provides victims compensation affected by certain crimes. A partial list of such crimes is: reckless driving injuries, homicide, battery, sexual assaults, physical abuse, and human trafficking. Compensable expenses include funeral and burial expenses, lost wages, medical bills, and mental health services. Awards may not exceed \$40,000 and accounts remain open unless compensation has reached this amount. Applications must be made within one year after the personal injury or death and must have been reported to the police within five days of its occurrence. An exception exists if it is unreasonable for the offense to have been reported within the five day time frame and extends five days after it becomes reasonable to report such offense.

PROPOSED BILL

NEW PROVISION 949.08(1)(a)

Under the proposed bill, an exception is added for: Victims of sexual assault (§ 940.225); Sexual assault of a child (§ 948.02); Engaging in repeated acts of sexual assault of the same child (§ 948.025); Sexual exploitation of a child (§ 948.05); Trafficking of a child (§ 948.051); Incest with a child (948.06); Sexual assault of a child placed in substitute care (§ 948.085); Sexual intercourse with a child age 16 or older (§ 948.09); Sexual assault of a child by a school staff person or a person who works or volunteers with children (§ 948.095); and human trafficking (§ 940.302(2)).

The exception allows victims to apply for compensation to receive mental health treatment and counseling consistent with the statute of limitations for reporting the crime. This exception triggers an extension for reporting the offense, as well as applying for the compensation fund.

NEW PROVISION 946.06(2)(a)

Additionally, a provision is added to close any account after four years of inactivity after the first award is paid to a victim not under the above sexual assault and human trafficking statutes. The calculating date is not the date of application, rather it is the date of the last award payout. This provision allows for easier accounting for the Department of Justice. The exception allows for victims of sexual assault and human trafficking to receive mental health and counseling treatment when need arises. This need is often many years after the trauma has occurred.

949.03 Compensable acts.

(1) (intro.) The department may order the payment of an award for personal injury or death which results from:

(a) Preventing or attempting to prevent the commission of a crime; apprehending or attempting to apprehend a suspected criminal; aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; aiding or attempting to aid a victim of a crime specified in par. (b); or aiding or attempting to aid a victim of the crime specified and the condition provided in par. (c).

(b) The commission or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, 948.085, 948.09, 948.095, 948.20, 948.30 or 948.51.

(c) The commission or the attempt to commit the crime specified in s. 346.67 (1) if the victim was a pedestrian.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97, 116; 2011 a. 271.

949.06 Computation of award.

(1) (intro.) In accordance with this subchapter, the department shall make awards, as appropriate, for any of the following economic losses incurred as a direct result of an injury:

(a) Medical treatment.

(b) (intro.) Work loss, which shall be determined as follows:

1. If the victim was employed at the time of the injury, loss of actual earnings shall be based upon the victim's net salary at the time of the injury.

2. If the victim was not employed at the time of the injury or, if as a direct result of the injury, the victim suffered a disability causing a loss of potential earnings, the award may be based upon a sufficient showing by the victim that he or she actually incurred loss of earnings. The amount of the award shall be reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing, but unreasonably failed to undertake.

(bm) If the victim is a homemaker, an amount sufficient to ensure that the duties and responsibilities are continued until the victim is able to resume the performance of the duties, or until the cost of services reaches the maximum allowable under sub. (2), whichever is less.

(c) Reasonable replacement value of any clothing and bedding that is held for evidentiary purposes, but not to exceed \$300.

(cm) Reasonable replacement value for property, other than clothing and bedding under par. (c), that is held for evidentiary purposes and is rendered unusable as a result of crime laboratory testing, but not to exceed \$200.

(d) Reasonable funeral and burial expenses, not to exceed \$2,000. The funeral and burial award may not be considered by the department under sub. (2).

(e) Dependent's economic loss, which shall include contributions of things of economic value provided by the victim to dependents but lost as a result of the victim's death. Loss of support shall be determined on the basis of the victim's net salary at the time of death, and shall be calculated as an amount equal to 4 times the victim's average annual earnings.

(f) Reasonable and necessary costs associated with securing and cleaning up a crime scene, not to exceed \$1,000.

(1m)

(a) In this subsection, "family member" means any spouse, domestic partner under ch. 770, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother, half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse or of a domestic partner under ch. 770.

(b) In accordance with this subchapter, the department shall make awards, as appropriate, to persons who, immediately prior to the crime, lived in the same household with and to family members of a victim of s. 940.01, 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09 for any of the economic losses specified in sub. (1) as a result of the person's or family member's reaction to the death. A dependent may recover both under sub. (1) and this subsection, subject to the limitation under sub. (2).

(2) The department may not make an award of more than \$40,000 for any one injury or death.

(3) (intro.) Any award made under this section shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

(a) From, or on behalf of, the person who committed the crime.

(b) From insurance payments or program, including worker's compensation and unemployment insurance.

(c) From public funds.

(d) As an emergency award under s. 949.10.

(e) From one or more 3rd parties held liable for the offender's acts.

(f) From an award under s. 949.26.

(4)

(a) An award may be made whether or not any person is prosecuted or convicted of any offense arising

out of such act or omission.

(b) The department may suspend proceedings under this subchapter for a period it deems appropriate on the grounds that a prosecution for an offense arising out of the act or omission has been commenced or is imminent.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

Cross-reference: See also ch. Jus 11, Wis. adm. code.

949.07 Manner of payment. The award, combining both the compensation award and the funeral and burial award, if applicable, shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. The department may pay any portion of an award directly to the provider of any service which is the basis for that portion of the award. No award may be subject to execution, attachment, garnishment or other process, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services or accommodations the costs of which are included in the award.

except as provided in
History: 1975 c. 344; 1979 c. 189; 1981 c. 20.

949.08 Limitations on awards.

(1) No order for the payment of an award may be made unless the application was made within 1 year after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made. The department may waive the one-year requirement under this subsection in the interest of justice.

(2) (intro.) No award may be ordered if the victim:

(a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or in which the victim could have reasonably foreseen could lead to the injury or death. This does not apply to awards to victims under s. 949.03 (1) (a).

(b) Committed a crime which caused or contributed to the victim's injury or death.

(d) Has not cooperated with appropriate law enforcement agencies.

(e) Is an adult passenger in the offender's vehicle, the crime involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

(em) Is an adult passenger in the offender's commercial motor vehicle, the crime involved is specified in s. 346.63 (6) or 940.25, and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31, or 948.30.

(f) Has not cooperated with the department in the administration of the program.

(g) Is included on the statewide support lien docket under s. 49.854 (2) (b), unless the victim provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(2m) If a claimant other than a victim has not cooperated with the department in the administration of the program, no award may be ordered for the claimant.

(3) No award may be made to any claimant if the award would unjustly benefit the offender or accomplice.

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

Hurley, Peggy

From: Knocke, Ryan
Sent: Wednesday, July 17, 2013 1:27 PM
To: Hurley, Peggy
Subject: RE: Rep. Goyke Bill Draft Idea

Ryan,
Below is my response to Peggy.

1) Thank you for helping to get to the bottom of how this should be drafted...I like what you wrote: I think it makes the most sense to simply create a section that says something like "A person whose injury is caused by [list the crimes here] may apply for an award at any time during which the incident or offense may be prosecuted pursuant to s. 939.74." Does that work for you?

This seems to be the best way to handle the problems with the 5 day and 1 year provisions.

2) I agree that we should specifically or expressly list "mental health services" in the statute. I believe this to be so important I don't want it subject to later interpretation which could change from DOJ's current inclusive reading.

3) I like your suggestions on the administrative end. Could we allow the DOJ to close the case 4 years after the last award was given? I'd like to establish a procedure that DOJ would notify, seek input from the victim, and allow the case to remain open if applicable or close it if applicable. Does that make sense? I wouldn't want a victim's case to automatically close after 4 years if there are services or costs that are still needed.

Thanks for the help...we're getting closer!

From: Hurley, Peggy
Sent: Friday, July 12, 2013 2:20 PM
To: Knocke, Ryan
Subject: RE: Rep. Goyke Bill Draft Idea

Hi Rep. Goyke and Ryan,

I have reviewed the materials a bit more closely, and a couple of thoughts occur to me. First, current law doesn't specifically allow an exception "in the interests of justice" for the 5 day reporting requirement – current law allows the exception for the one year application deadline. The statute reads, with the relevant portions bolded:

949.08 Limitations on awards.

949.08(1)

(1) No order for the payment of an award may be made unless the application was made within 1 year after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been **reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made.** The department may waive the one-year requirement under this subsection in the interest of justice.

There is some "wiggle room" for the 5 day reporting period, as the statute allows the department to "count" a report that was made within 5 days after the report could "reasonably" be made. However, the "in the interest of justice" language applies specifically to the one year application. I am not sure that this changes anything with regard to the request, but I did want to point it out because the DOJ representative indicated that they routinely grant exceptions to

the 5 day limit, but not necessarily to the one year limit. Might they be able to consider child victims who fail to apply within a year under the current law "in the interests of justice" allowance?

In any case, it appears that you would like, for the listed crimes, an **automatic** exception to the one year limit on applying for an award. Is that correct?

Further, it appears that, for each of the listed crimes, you want for there to be a limit on applying for an award that matches the statute of limitations for prosecuting the crime. Is that correct?

Some of the crimes listed have no statute of limitations; some, like sexual assault, have varying statutes of limitations depending on the degree. For example, first degree sexual assault has no limitation; felony sexual assaults have a 6 year limit, and misdemeanor sexual assaults have a 3 year limit. Some of the sexual crimes against children have varying statutes of limitations, too, and some are prosecutable until the victim is 45 years of age.

I think it makes the most sense to simply create a section that says something like "A person whose injury is caused by [list the crimes here] may apply for an award at any time during which the incident or offense may be prosecuted pursuant to s. 939.74." Does that work for you?

Second, you indicated that you do not want to allow for "unlimited recovery," but there is no statute of limitations for some of the crimes listed. In one sense, the recovery will be unlimited (by time), but it is still limited to \$40,000 for each injury. Things may get tricky if a victim was repeatedly harmed by the same assailant, as the \$40,000 limit is for each injury. I don't know if that directly translates to each "count" charged by a district attorney, or if the DOJ considers it "one injury" if a victim is repeatedly assaulted by the same person. You may want to seek clarification on this, just to be sure that by extending the application for a crime that has no statute of limitations, the bill does not inadvertently allow for unlimited recovery if a person wants to pursue therapy for varying injuries that he or she claims is caused by the initial crime.

Interestingly, mental health services are not specifically mentioned as compensable in current law. The definition of "personal injury" specifically includes "nervous or mental shock," but "medical treatment" is defined to include "medical, surgical, dental, optometric, chiropractic, podiatric and hospital care; medicines; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. It appears that DOJ is interpreting medical care to include mental health treatment under current law, but if you wanted to make it very clear that mental health treatment is to be treated differently from other types of medical treatment, I suggest amending the definition of "medical treatment" to include mental health services and then to state, in the exception to the "one year" rule, that victims of the listed crimes may apply for an award to pay for costs associated with mental health services, so long as the crime is prosecutable. Does that make sense?

Third, I am not sure I understand the administration portion of the request. It appears that a person may make an initial application for an award within a year of the crime, but then can go back to DOJ repeatedly and request additional money (up to \$40,000) for as long as they want to receive compensation for a covered service. Is that correct?

The statute (949.07) does require DOJ to make the award in one lump sum except in cases of "protracted disability," which I suppose would include the cases involved in this draft. One approach would be to say that all payments shall be made within 4 years (or whatever limit you choose) of the application date, except for the payments that are for mental health services for the victims of the specified crimes.

Or, the bill could specify that DOJ may not make any more payments if 4 years have passed since the date of the last payment, except for payments that are for mental health services for the victims of the specified crimes. If you use this approach, you may not want to make an exception for the victims of specified crimes, and say that for all crime victims seeking awards, if 4 years have passed since DOJ last paid out, they are done. This approach would still allow victims of certain crimes to have a longer period of eligibility for an award than the victims of other crimes, but would treat all victims the same so far as administration of the award once the victim is deemed eligible. Please let me know your thoughts.

Peggy

From: Knocke, Ryan
Sent: Friday, July 12, 2013 12:21 PM
To: Hurley, Peggy
Subject: RE: Rep. Goyke Bill Draft Idea

Peggy-

I hope you had a good week and enjoyed the time off! I forwarded your questions to Evan to review and he supplied this information below. I hope this helps answer some of your questions. If you need anything else, please ask. Thank you so very much for your assistance!

-Ryan

Peggy,

A few answers for you. First, it's my understanding that the 5 day reporting requirement would remain in place - however - it is my understanding that the statute currently includes a provision that the Crime Victim Fund may accept applicants that fall outside of this time for good cause. When we met with the DOJ's representative in charge of the Fund, she indicated that DOJ generally accepts cases outside of the 5 days when the victim is a child or when the crime is intimate in nature (as are the crimes addressed in our proposal), so I don't believe there needs to be a change there.

Second, the one year issue is really the heart of the bill. Current law states that once eligible, victims of crime have one year to decide to seek recovery from the Fund. We've encountered cases, largely when the victim is a child, where the victim is not ready to access treatment within the year after the crime. Our intent was that once initial eligibility was determined (cooperation within the 5 days or not with good cause), then the victim would have a longer period to decide to seek recovery from the Fund - but only recovery for mental health services once the first year lapsed. I'd like the time period for recovery of mental health services to match the statute of limitations for the crime the victim suffered. I believe our request included a cap for recovery of mental health services, but if not please let me know because it's not our intention to allow unlimited recovery.

Third, this is the hard part of the bill. When we met with DOJ, they expressed problems with accounting within the Fund. There is a \$40,000 cap I believe, but often the cases are open for years and DOJ has to account for up to 40,000, but is never sure if that much will be paid out. We're seeking a way for DOJ to better account for their open Fund cases and thereby better manage and account for the Fund's dollars. I'm open to suggestions on how that could be accomplished.

Hope this helps...

Evan

From: Hurley, Peggy
Sent: Wednesday, July 03, 2013 1:32 PM
To: Knocke, Ryan
Subject: RE: Rep. Goyke Bill Draft Idea

Hi Ryan,

I hope you are having a nice week. I am reviewing this draft request, and I have a couple of questions. It is my understanding that you wish for victims of certain crimes to be exempted from the current deadlines for applying for victim compensation. Under current law, a victim may apply for compensation if he or she reported the crime to police within 5 days after it was committed and he or she applies for compensation within one year after the crime occurs.

There are two separate requirements, then: First, that the victim report the crime within 5 days. Do you want the victims of the specified crimes to be exempt from reporting the crime within 5 days? If yes, do you want there to be any kind of deadline during which they must report the crime to police, or do you want the victims to be exempt from reporting the crime at all?

Second, that the victim apply for compensation within one year after the injury occurs. Do you want to extend or to eliminate this deadline for the victims of the specified crimes? If you want to extend it, what deadline do you think is appropriate?

The next question I have relates to the second provision in the materials you forwarded to me: a provision is requested to "close any account after four years of inactivity after the first award is paid to a victim not under the above sexual assault and human trafficking statutes." I am afraid I don't understand what this means or what the intent is behind the requested language. Current law generally requires the compensation award to be given out in one lump sum, but does allow for periodic payments in cases of death or protracted disability (see s. 949.07). Can you please clarify your intent with regard to this provision?

I appreciate your assistance. I will be leaving on vacation from July 4-10, so if we don't touch base today, we can discuss this when I return. Enjoy your holiday!

Peggy

From: Knocke, Ryan
Sent: Monday, June 24, 2013 9:26 AM
To: Hurley, Peggy
Subject: Rep. Goyke Bill Draft Idea

Peggy-

I hope this message finds you well. Rep. Goyke asked that I forward to you a bill draft idea he has regarding laws pertaining to sexual assault of a child. Would this fall under your jurisdiction? I have attached the proposal ideas with cited statutes. Please let me know if you need anything or have any questions on this. I am sure you are busy but just wanted to add this to the pending box per say. Thank you!

- Ryan

Ryan Knocke
Legislative Aide
Office of State Representative Evan Goyke
Telephone: (608) 266-0645



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2568/P1

PJH:.....

eev

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1

AN ACT *gen cat*; relating to: awards for the victims of crimes.

Analysis by the Legislative Reference Bureau

Under current law, a person who is the victim of a crime or a close relative of a victim of a crime may receive compensation for certain losses he or she suffers as a result of the crime, including payment for medical treatment, replacement of lost or damaged property, and certain economic losses, including loss of income that occurs as a result of the crime. Under current law, a person may apply, within one year after the crime occurs, to the department of justice (DOJ) for an award if the person reported the crime to law enforcement within five days after the crime occurred. Current law allows DOJ to grant an award after the one year deadline for application has passed in the interest of justice.

Under current law, DOJ may award up to \$40,000 per injury or death and generally makes the payment in one lump sum. However, DOJ may make periodic payments in the case of a death or protracted disability.

Under this bill, a person who is a victim of certain sexual assault crimes, including sexual assault against a child and human trafficking, may apply for an award for compensation from DOJ for the payment of mental health services for as long as the crime committed against him or her is prosecutable under the applicable statutes of limitation.

Under the bill, DOJ may close its accounts relating to any victim to whom DOJ has granted a compensation award if four years have passed since the time DOJ made a payment to or on behalf of the victim and DOJ determines, after consulting with the victim, that no further payments or services are warranted.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 [✓]
SECTION 1. 949.01 (4d) of the statutes is created to read:

2 949.01 (4d) "Mental health treatment" includes mental health services,
3 emotional therapy and psychotherapy services, and psychiatric and psychological
4 services. Mental health treatment includes inpatient and outpatient care.

****NOTE: I couldn't find a definition of "mental health treatment" in the statutes,
so I created this one. Please let me know if you would like this definition changed.

5 [✓]
SECTION 2. 949.06 (1) (am) of the statutes is created to read:

6 949.06 (1) (am) Mental health treatment.

7 [✗]
SECTION 3. 949.08 (1) of the statutes is amended to read:

8 949.08 (1) ~~No~~ [✓] Except as provided in sub. (1m), no order for the payment of an
9 award may be made unless the application was made within 1 year after the date of
10 the personal injury or death, and the personal injury or death was the result of an
11 incident or offense which had been reported to the police within 5 days of its
12 occurrence or, if the incident or offense could not reasonably have been reported
13 within such period, within 5 days of the time when a report could reasonably have
14 been made. The department may waive the one-year requirement under this
15 subsection in the interest of justice.

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

16 SECTION 4. 949.08 (1m) of the statutes is created to read:

17 949.08 (1m) The department may grant an award for mental health treatment
18 related to a personal injury or death that results from the commission or the attempt
19 to commit any crime specified in s. 940.225, 948.02, 948.025, 948.05, 948.051, 948.06,

940.302 (2),
940.302 (2),

1 948.085, 948.09, 948.095 or 940.302 (2) if the department receives the application
2 for an award at any time during which the crime may be prosecuted pursuant to s.
3 939.74.

4 SECTION 5. 949.175 of the statutes is created to read:

5 **949.175 Closing accounts.** The department may close any account relating
6 to an award granted to or on behalf of a victim under this subchapter if all of the
7 following apply:

8 (B) (1) Four years have passed from the date on which the department last made
9 a payment to or on behalf of the victim.

10 (B) (2) The department has given written notice to the victim that it intends to close
11 the account and allows the victim an opportunity to object.

12 (B) (3) The department determines that all appropriate payments have been made.
13 Whenever possible, the department shall confer with the victim before making this
14 determination.

****NOTE: This section could, alternatively, be drafted as a subsection of s. 949.02,
with a focus toward requiring the department to promulgate rules for closing the
accounts. Please let me know if you would prefer that approach and/or if you have
changes to the section as drafted.

Additionally, I am not sure if the language in this section is precise enough. If you
or the department can suggest additional or alternative language to "close any account
relating to an award," please let me know.

15 SECTION 6. Initial applicability.

16 (1) The treatment of sections 948.01 (1) and (1m) of the statutes first applies
17 to applications that are made on the effective date of this subsection.

****NOTE: Please let me know if you'd prefer the initial applicability to affect any
(or all) additional statutes treated by the bill, or if you'd prefer not to include an initial
applicability section.

18

(END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2568/P1dn

PJH:.....

ellv

late

Representative Goyke,

Please review this preliminary draft to ensure that it complies with your intent. Please let me know if you have any questions or would like any changes. When the draft meets your approval, I will remove the four-star notes and redraft it in introducible form.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2568/P1dn
PJH:eev:rs

July 25, 2013

Representative Goyke,

Please review this preliminary draft to ensure that it complies with your intent. Please let me know if you have any questions or would like any changes. When the draft meets your approval, I will remove the four-star notes and redraft it in introducible form.

Peggy Hurley
Legislative Attorney
Phone: (608) 266-8906
E-mail: peggy.hurley@legis.wisconsin.gov

Hurley, Peggy

From: Knocke, Ryan
Sent: Monday, October 07, 2013 4:43 PM
To: Hurley, Peggy
Subject: RE: Draft review: LRB -2568/P1 Topic: Extend time limit for minor victims of sex crimes to seek compensation

Peggy-

Thank you for the question. We should have been more clear. I spoke with Rep. Goyke and he would like it to have 50k in each year.

Thank you!

-Ryan

From: Hurley, Peggy
Sent: Monday, October 07, 2013 10:52 AM
To: Knocke, Ryan
Subject: RE: Draft review: LRB -2568/P1 Topic: Extend time limit for minor victims of sex crimes to seek compensation

Hi Ryan,

I can add a fiscal change section to the bill to increase the appropriation under s. 20.455 (5) (b) by \$100,000. Do you want that to be 50k in each year of the biennium, 100k in each year of the biennium, or something else?

From: Knocke, Ryan
Sent: Monday, October 07, 2013 10:39 AM
To: Hurley, Peggy
Subject: FW: Draft review: LRB -2568/P1 Topic: Extend time limit for minor victims of sex crimes to seek compensation

Peggy-

I hope you had a wonderful weekend! Rep. Goyke has met with DOJ twice on this bill and they provided some numbers to us on how many cases they have had that would be affected by this and the dollars they have paid out in mental health services. Going off those numbers, Rep. Goyke wanted me to contact you to see if you could make a small change to this bill. He wanted to have an appropriation inserted of \$100,000 from GPR to the Crime Victim Fund to help pay for the services detailed in the bill.

Could that small change be made? Let me know if you have any questions and thank you so much for working with us.

- Ryan

From: LRB.Legal
Sent: Thursday, July 25, 2013 1:24 PM
To: Rep.Goyke
Subject: Draft review: LRB -2568/P1 Topic: Extend time limit for minor victims of sex crimes to seek compensation

Following is the PDF version of draft LRB -2568/P1 and drafter's note.



State of Wisconsin
2013 - 2014 LEGISLATURE

SOON



LRB-2568/P1

PJH:eev:rs

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rmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

10-6-13

and making an appropriation

1 AN ACT *to amend* 949.08 (1); and *to create* 949.01 (4d), 949.06 (1) (am), 949.08
2 (1m) and 949.175 of the statutes; **relating to:** awards for the victims of crimes.

Analysis by the Legislative Reference Bureau

Under current law, a person who is the victim of a crime or a close relative of a victim of a crime may receive compensation for certain losses he or she suffers as a result of the crime, including payment for medical treatment, replacement of lost or damaged property, and certain economic losses, including loss of income that occurs as a result of the crime. Under current law, a person may apply, within one year after the crime occurs, to the Department of Justice (DOJ) for an award if the person reported the crime to law enforcement within five days after the crime occurred. Current law allows DOJ to grant an award after the one-year deadline for application has passed in the interest of justice.

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Under this bill, a person who is a victim of certain sexual assault crimes, including sexual assault against a child and human trafficking, may apply for an award for compensation from DOJ for the payment of mental health services for as long as the crime committed against him or her is prosecutable under the applicable statutes of limitation.

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For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 949.01 (4d) of the statutes is created to read:

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3 emotional therapy and psychotherapy services, and psychiatric and psychological
4 services. Mental health treatment includes inpatient and outpatient care.

****NOTE: I couldn't find a definition of "mental health treatment" in the statutes, so I created this one. Please let me know if you would like this definition changed.

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20 948.051, 948.06, 948.085, 948.09, or 948.095 if the department receives the

1 application for an award at any time during which the crime may be prosecuted
2 pursuant to s. 939.74.

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8 a payment to or on behalf of the victim.

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10 close the account and allows the victim an opportunity to object.

11 (3) The department determines that all appropriate payments have been
12 made. Whenever possible, the department shall confer with the victim before making
13 this determination.

****NOTE: This section could, alternatively, be drafted as a subsection of s. 949.02, with a focus toward requiring the department to promulgate rules for closing the accounts. Please let me know if you would prefer that approach and/or if you have changes to the section as drafted.

Additionally, I am not sure if the language in this section is precise enough. If you or the department can suggest additional or alternative language to "close any account relating to an award," please let me know.

14 **SECTION 6. Initial applicability.**

15 (1) The treatment of section 949.08 (1) and (1m) of the statutes first applies to
16 applications that are made on the effective date of this subsection.

****NOTE: Please let me know if you'd prefer the initial applicability to affect any (or all) additional statutes treated by the bill, or if you'd prefer not to include an initial applicability section.

17 (END)

Insert fiscal

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2568/P1ins
PJH:eev:rs

FISCAL INSERT:

SECTION ~~4~~¹. Fiscal changes.

(1) VICTIM SERVICES. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of justice under section 20.455 (5) (b) of the statutes, as affected by the acts of 2013, the dollar amount is increased by \$50,000 for the first fiscal year of the fiscal biennium in which this subsection takes effect to provide compensation for mental health services to victims of sexual assault or human trafficking. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of justice ~~20.455 (5) (b)~~ under section 20.455 (5) (b) of the statutes, as affected by the acts of 2013, the dollar amount is increased by \$50,000 for the second fiscal year of the fiscal biennium in which this subsection takes effect to provide compensation for mental health services to victims of sexual assault or human trafficking.

Rose, Stefanie

From: Knocke, Ryan
Sent: Thursday, October 17, 2013 11:34 AM
To: LRB.Legal
Subject: Draft Review: LRB -2568/1 Topic: Extend time limit for minor victims of sex crimes to seek compensation

Please Jacket LRB -2568/1 for the ASSEMBLY.

Hurley, Peggy

From: Knocke, Ryan
Sent: Wednesday, October 23, 2013 8:44 AM
To: Hurley, Peggy
Subject: RE: LRB 2568 Changes - Rep. Goyke - Time Sensitive

Thank you Peggy. Evan and I got your VM's and your e-mail. Rep. Goyke wanted me to forward to you the following thoughts on the changes.

Please forward the following:

Thanks Peggy! I appreciate all of your prompt work on this!

- 1) no change needed to cover 4th degree sex assault, I will correct DOJ's reading of the bill
- 2) I am ok with deleting section one and making the change highlighted below.

From: Hurley, Peggy
Sent: Tuesday, October 22, 2013 6:25 PM
To: Knocke, Ryan
Subject: RE: LRB 2568 Changes - Rep. Goyke - Time Sensitive

Hi Ryan,

I left a voice message, but here's the gist:

With regard to including 4th degree sexual assault, Section 4 of the bill already covers "any crime specified in s. 940.225 ..." Section 940.225 (3m) is 4th degree sexual assault. I am not sure what change DOJ is looking for here.

With regard to "incorporating their definition as found under JUS 11.06," there is no definition of "mental health treatment" in that administrative rule. Rule 11.06 (2) does set forth "eligible services" as follows:

(2) ELIGIBLE SERVICES. Eligible types of mental health treatment under this chapter include:

- (a) Inpatient psychiatric services when prescribed by a physician and when provided within the psychiatric unit of a general hospital or a psychiatric facility.**
- (b) Outpatient psychotherapy services when provided by a psychiatrist, licensed psychologist, or an eligible masters level provider who meets the supervision requirements.**
- (c) Crisis intervention services when provided under the aegis of a community facility recognized by the county unified services board or as a component of services provided in a general hospital when such services are provided under the supervision of the psychiatrist or licensed psychologist.**

Some of the eligible services rely on other criteria set forth in JUS 11.06, such as "an eligible masters level provider who meets the supervision requirements." The supervision requirements for masters level providers are found in JUS 11.06 (1) (c).

Given that DOJ already sets forth what is and isn't covered as far as "mental health treatment" services for victims, it may simplest to remove the new definition from your bill, but keep "mental health treatment" as an itemization of awards under s. 949.06 (1) (that is, to delete section 1 of the bill but retain section 2 of the bill). With that approach, the

bill doesn't change what kind of mental health services are covered, it only extends the deadline for granting awards for the services already covered under current law.

I am having difficulty trying to shape the "list of eligible services" to the form of a statutory definition, because the list of eligible services includes qualifiers, such as "when provided by a psychiatrist" or "when provided under the aegis of a community facility recognized by the county unified services board."

I wanted to get this drafted tonight so that it could be edited and typed when the other LRB staff arrives first thing tomorrow morning, but I am not sure how to proceed. Complicating matters, I have a 10 am meeting that will probably last into the afternoon. I will be spending part of tomorrow morning preparing for that meeting, but I will make myself as available as possible to discuss this draft and its changes.

Peggy

From: Knocke, Ryan
Sent: Tuesday, October 22, 2013 4:53 PM
To: Hurley, Peggy
Subject: RE: LRB 2568 Changes - Rep. Goyke - Time Sensitive

Peggy-

That is totally fine. THANK YOU! We owe you one.

- Ryan

From: Hurley, Peggy
Sent: Tuesday, October 22, 2013 4:51 PM
To: Knocke, Ryan
Subject: RE: LRB 2568 Changes - Rep. Goyke - Time Sensitive

Ryan,

Assuming I don't have any questions when I start to draft these changes, I can get these out to you by tomorrow morning. Unfortunately, I will not be able to get them to you by tonight. My apologies.

Peggy

From: Knocke, Ryan
Sent: Tuesday, October 22, 2013 4:32 PM
To: Hurley, Peggy
Subject: LRB 2568 Changes - Rep. Goyke - Time Sensitive

Peggy-

Thank you for taking my call! I am having the jacket sent over to you right now.

The two small changes Rep. Goyke would like to make are:

- 1.) Please include 4th degree sexual assault as a crime eligible under the bill for services – Section 4 I think is where the others are listed.
- 2.) Under the definition of mental health treatment, DOJ suggested incorporating their definition as found under JUS 11.06

That is all! These changes would apply to both the Senate and Assembly versions. THANK YOU!!

- Ryan

Ryan Knocke

Legislative Aide

Office of State Representative Evan Goyke

Telephone: (608) 266-0645



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2568/1

PJH:eev:ls

stays in

2013 BILL

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- 1 AN ACT *to amend* 949.08 (1); and *to create* 949.01 (4d), 949.06 (1) (am), 949.08
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BILL

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BILL

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21 appropriation to the department of justice under section 20.455 (5) (b) of the statutes,
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23 second fiscal year of the fiscal biennium in which this subsection takes effect to
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25 human trafficking.

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SECTION 7. Initial applicability.

(1) The treatment of section 949.08 (1) and (1m) of the statutes first applies to applications that are made on the effective date of this subsection.

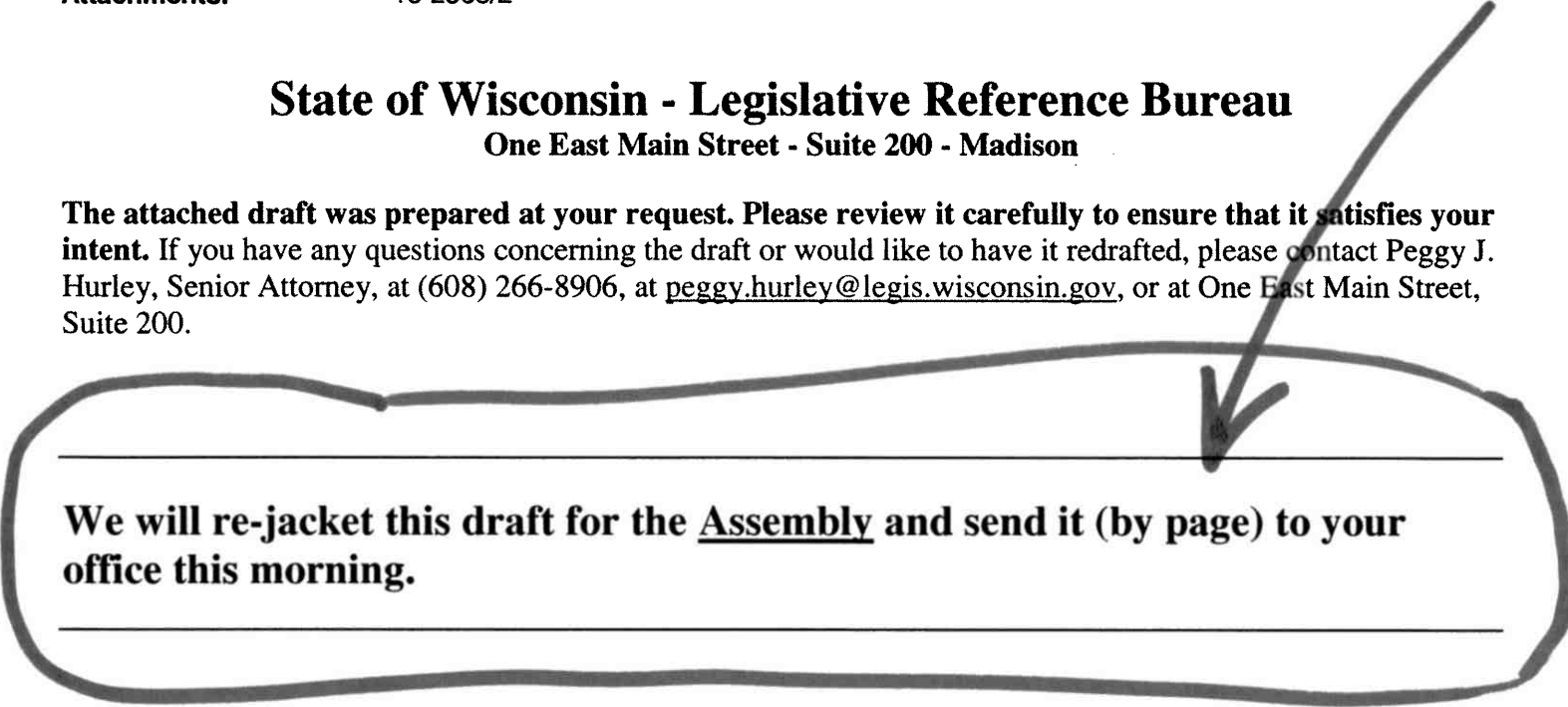
(END)

Barman, Mike

From: LRB.Legal
To: Rep.Goyke
Subject: Draft review: LRB -2568/2 Topic: Extend time limit for minor victims of sex crimes to seek compensation
Attachments: 13-2568/2

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Peggy J. Hurley, Senior Attorney, at (608) 266-8906, at peggy.hurley@legis.wisconsin.gov, or at One East Main Street, Suite 200.



We will re-jacket this draft for the Assembly and send it (by page) to your office this morning.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.